

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Collection Agency License of:

No. 10F-BD039-BNK

3 **COMMERCIAL RECOVERY SYSTEMS,**
4 **INC. AND TIM FORD, PRESIDENT**
5 8035 East R.L. Thornton Freeway, Suite 220
6 Dallas, Texas 75228,

NOTICE OF HEARING

Petitioners.

7 PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-137,
8 6-138, and 41-1092.02, the above-captioned matter will be heard through the Office of
9 Administrative Hearings, an independent agency, and is scheduled for June 15, 2010, at 8:00 a.m., at
10 the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602)
11 542-9826 (the "Hearing").

12 The purpose of the Hearing is to determine if grounds exist for: (1) the issuance of an order
13 pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to
14 take the appropriate affirmative actions, within a reasonable period of time prescribed by the
15 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
16 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
17 suspension or revocation of Petitioners' license pursuant to A.R.S. § 32-1053; (4) an order to pay
18 restitution of any fees earned in violation of A.R.S. §§ 32-1001, *et seq.*, pursuant to A.R.S. §§ 6-131
19 and 6-137; and (5) an order or any other remedy necessary or proper for the enforcement of statutes
20 and rules regulating collection agencies pursuant to A.R.S. §§ 6-123 and 6-131.

21 Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of
22 Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied
23 or expressed, to the Director of the Office of Administrative Hearings or the Director's designee to
24 preside over the Hearing as the Administrative Law Judge, to make written recommendations to the
25 Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office
26 of Administrative Hearings has designated Lewis Kowal, at the address and phone number listed

1 above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona
2 Administrative Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08,
3 the Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing,
4 final decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative
5 Law Judge is specifically prohibited from entering.

6 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**
7 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue
8 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of
9 Administrative Hearings.

10 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by
11 counsel, or to proceed without counsel during the giving of all evidence, to have a reasonable
12 opportunity to inspect all documentary evidence, to cross-examine witnesses, to present evidence
13 and witnesses in support of his/her interests, and to have subpoenas issued by the Administrative
14 Law Judge to compel attendance of witnesses and production of evidence. Pursuant to A.R.S.
15 § 41-1092.07(B), any person may appear on his or her own behalf or by counsel.

16 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be
17 made by a court reporter or by electronic means. Any party that requests a transcript of the
18 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

19 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant
20 Attorney General Erin Gallagher, (602) 542-8935, 1275 West Washington, Phoenix, Arizona 85007.

21 **NOTICE OF APPLICABLE RULES**

22 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")
23 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting
24 forth the rules of practice and procedure applicable in contested cases and appealable agency actions
25 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules
26 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through

1 R2-19-122. A copy of these rules is enclosed.

2 Pursuant to A.A.C. R20-4-1209, Petitioners shall file a written answer **within twenty (20)**
3 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Petitioners' position
4 or defense and shall specifically admit or deny each of the assertions contained in this Notice of
5 Hearing. If the answering Petitioners are without or are unable to reasonably obtain knowledge or
6 information sufficient to form a belief as to the truth of an assertion, Petitioners shall so state, which
7 shall have the effect of a denial. Any assertion not denied is deemed admitted. When Petitioners
8 intend to deny only a part or a qualification of an assertion, or to qualify an assertion, Petitioners
9 shall expressly admit so much of it as is true and shall deny the remainder. Any defense not raised
10 in the answer is deemed waived.

11 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Petitioners will be**
12 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as
13 true and admitted and the Superintendent may take whatever action is appropriate, including issuing
14 an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating
15 collection agencies in Arizona pursuant to A.R.S. §§ 6-123 and 6-131, and imposing a civil money
16 penalty pursuant to A.R.S. § 6-132.

17 Petitioners' answer shall be mailed or delivered to the Arizona Department of Financial
18 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or
19 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,
20 Arizona 85007 and to Assistant Attorney General Erin Gallagher, Consumer Protection & Advocacy
21 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

22 **Persons with disabilities may request reasonable accommodations such as interpreters,**
23 **alternative format or assistance with physical accessibility.** Requests for accommodations must
24 be made as early as possible to allow time to arrange the accommodations. If accommodations are
25 required, call the Office of Administrative Hearings at (602) 542-9826.

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received by the Examiner on August 6 and 7, 2009; however,
Petitioners still have not sent all of the required documentation;

b. Failed to keep and maintain trust account reconciliations, prepared at least
once a month, specifically:

- i. CRSI does not reconcile or maintain a reconciliation of either their
trust accounts or operating accounts to respective internal records; and
- ii. Petitioners failed to correct this violation from their previous
examination;

c. Failed to keep and maintain a trust general ledger reflecting all deposits to and
payments from a trust account, specifically:

- i. Petitioners do not maintain a trust general ledger; and
- ii. Petitioners failed to correct this violation from their previous
examination; and

d. Failed to keep and maintain books, accounts and records adequate to provide a
clear and readily understandable record of all business conducted by the
collection agency, including books, records and files maintained so that the
Superintendent can easily conduct an unannounced spot check, as well as the
examinations and investigations required by A.R.S. §§ 6-122 and 6-124,
specifically:

- i. CRSI does not maintain a month-end client liability report; and
- ii. Petitioners failed to correct this violation from their previous
examination.

5. Based upon the above findings, the Department issued and served upon CRSI and Mr.
Ford an Order to Cease and Desist; Notice of Opportunity for Hearing; Consent to Entry of Order on
January 20, 2010.

6. The Department received Petitioners' request for a hearing to appeal the Cease and

1 Desist Order on March 11, 2010.

2 LAW

3 1. Pursuant to Title 6 and Title 32, Chapter 9 of the Arizona Revised Statutes, the
4 Superintendent has the authority and the duty to regulate all persons engaged in the collection
5 agency business and with the enforcement of statutes, rules, and regulations relating collection
6 agencies.

7 2. By the conduct set forth in the Findings of Fact, CRSI and Mr. Ford have violated the
8 following:

- 9 a. A.A.C. R20-4-1504(D), by failing to maintain all required records and make
10 them available for examination within three (3) working days after request by
11 the Superintendent;
- 12 b. A.A.C. R20-4-1504(B)(5), by failing to keep and maintain trust account
13 reconciliations;
- 14 c. A.A.C. R20-4-1504(B)(4), by failing to keep and maintain a trust general
15 ledger reflecting all deposits to and payments from a trust account; and
- 16 d. A.A.C. R20-4-1504(B)(6), by failing to keep and maintain books, accounts
17 and records adequate to provide a clear and readily understandable record of
18 all business conducted by the collection agency, including books, records, and
19 files maintained so that the Superintendent can easily conduct an unannounced
20 spot check, as well as the examinations and investigations required by A.R.S.
21 §§ 6-122 and 6-124.

22 3. Petitioners do not meet any of the exemptions to the licensing requirements set forth
23 in A.R.S. § 32-1004(A).

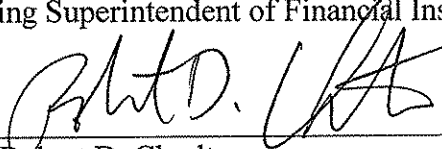
24 4. The violations, set forth above, constitute grounds for: (1) the issuance of an order
25 pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to
26 take the appropriate affirmative actions, within a reasonable period of time prescribed by the

1 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
2 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
3 suspension or revocation of Petitioners' license pursuant to A.R.S. § 32-1053; (4) an order to pay
4 restitution of any fees earned in violation of A.R.S. §§ 32-1001, *et seq.*, pursuant to A.R.S. §§ 6-
5 131(A)(3) and 6-137; (4) an order to pay restitution of any fees earned in violation of A.R.S. §§ 32-
6 1001, *et seq.*, pursuant to A.R.S. §§ 6-131 and 6-137; and (5) an order or any other remedy necessary
7 or proper for the enforcement of statutes and rules regulating collection agencies pursuant to A.R.S.
8 §§ 6-123 and 6-131.

9 WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the
10 above-described violations, the Superintendent may issue a cease and desist order pursuant to A.R.S.
11 § 6-137; affirm the January 20, 2009 Cease and Desist Order; impose a civil money penalty pursuant
12 to A.R.S. § 6-132; suspend or revoke Petitioners' license; order the restitution of any fees earned in
13 violation of A.R.S. §§ 32-1001, *et seq.*, pursuant to A.R.S. §§ 6-131 and 6-137; and order any other
14 remedy necessary or proper for the enforcement of statutes and rules regulating collection agencies
15 pursuant to A.R.S. §§ 6-123 and 6-131.

16 DATED this 31st day of March 2010.

17 Thomas L. Wood
18 Acting Superintendent of Financial Institutions

19 By 
20 Robert D. Charlton
21 Assistant Superintendent
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23 ...
24 ...
25 ...
26

1 ORIGINAL of the foregoing filed this 31st
2 day of March, 2010, in the office of:

3 Thomas L. Wood
4 Acting Superintendent of Financial Institutions
5 Arizona Department of Financial Institutions
6 ATTN: Susan Longo
7 2910 N. 44th Street, Suite 310
8 Phoenix, AZ 85018

9 COPY mailed same date to:


10 Lewis Kowal, Administrative Law Judge
11 Office of the Administrative Hearings
12 1400 West Washington, Suite 101
13 Phoenix, AZ 85007

14 Erin O. Gallagher, Assistant Attorney General
15 Office of the Attorney General
16 1275 West Washington
17 Phoenix, AZ 85007

18 Robert D. Charlton, Assistant Superintendent
19 Jack Watson, Senior Examiner
20 Arizona Department of Financial Institutions
21 2910 N. 44th Street, Suite 310
22 Phoenix, AZ 85018

23 AND COPY MAILED SAME DATE by
24 Certified Mail, Return Receipt Requested, to:

25 Robert F. Kemp, Esq.
26 4145 Travis Street, Suite 201
Dallas, Texas 75204
Attorneys for Petitioners

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28 #761409